Filed 12/21/12 In re Gustavo Z. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re GUSTAVO Z., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. GUSTAVO Z., Defendant and Appellant.	F064058 (Super. Ct. No. 11CEJ600923-1) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Alvin M. Harrell, III, Judge.

Eloy I. Trujillo, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and J. Robert Jibson, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Wiseman, Acting P.J., Levy, J., and Cornell, J.

The court adjudged appellant, Gustavo Z., a ward of the court (Welf. & Inst. Code, § 602),[1] after it sustained allegations charging him with misdemeanor battery (Pen. Code, § 242).

On appeal, appellant contends the juvenile court abused its discretion when it declared him a ward of the court and ordered him removed from his parents' home. We affirm.

FACTS

On October 19, 2011, Fresno police officers were dispatched to appellant's home regarding an assault. The officers took the 16-year-old appellant into custody after appellant's mother told them that he had pushed her, causing her to fall into a wall.

On October 20, 2011, the district attorney filed a wardship petition charging appellant with battery.

On November 14, 2011, the court found the misdemeanor battery charge true.

During a probation department interview, appellant admitted being belligerent with his mother on approximately four prior occasions, including a week prior to the current incident when officers were dispatched to appellant's house. Appellant explained that during the earlier incident, his parents called the police because they were afraid appellant was going to physically harm his 16-year-old girlfriend who was approximately eight months pregnant with appellant's child. Appellant was taken to a local hospital where he received a mental health evaluation and was released after six hours. Appellant's only other prior contact with law enforcement occurred on April 16, 2011, when police were called after he allegedly pushed his mother three times to get her out of

[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

his room that she had entered to tell him to stop smoking marijuana. However, no charges were filed as a result of that incident.

Appellant also admitted during the interview that he began using marijuana and alcohol when he was 13 years old and ecstasy when he was 14. Appellant used marijuana on a daily basis, alcohol once a month, and ecstasy on four occasions. According to appellant, he was "'jumped in'" to the Bulldog gang when he was 14 years old.

During a probation department interview, appellant's father stated that he believed appellant acted out aggressively only when he smoked marijuana. He also reported that a few days prior to the current incident, after arguing with him and appellant's mother, appellant punched holes in a wall. Appellant's parents reported that appellant came and went as he pleased, did not abide by the curfew they set for him, often staying out all night, and that he ran away from home on three occasions.

Appellant's probation report disclosed that although appellant was in the 11th grade, he had completed only 35.5 units out of 146.5 units he had attempted and he had a .43 grade point average. He also had six suspensions between 2007 through 2011, including one on March 3, 2010, for fighting and one on June 6, 2011, for drawing a dog paw, both of which were considered gang activity. Appellant began attending Pershing Continuation School on March 30, 2011, after being expelled from Central High School - East Campus for smoking marijuana on campus. Appellant also had 51 instances of defiance between January 2007 and October 2011, and he admitted to the probation officer that he would ditch school so he could smoke marijuana.

The report further noted that appellant had been detained in juvenile hall since his arrest on October 19, 2011. During that time, he was cited for "[b]eing on window after being warned," attempting to incite gang trouble, using a gang handshake, and fighting.

The fighting incident resulted in appellant being demoted from phase 3 to a high security contract.

The probation report, in pertinent part, recommended that appellant be temporarily removed from the custody of his parents and that he remain in custody for an unspecified period of time, followed by placement on the electronic monitor for up to 45 days and a commitment to the Day Reporting Center (DRC) for a period of 180 days.

Appellant's disposition hearing was originally scheduled for November 30, 2011. On that date, the prosecutor argued that appellant should be committed to juvenile hall for an additional 30 days before being placed on the electronic monitor and committed to DRC. After some discussion directly with appellant, the court advised him that its tentative decision had been to commit him for another 30 days to juvenile hall before committing him to DRC. However, after further discussion regarding the impending birth of appellant's child, the court agreed to continue the matter until December 13, 2011, with appellant remaining in custody at juvenile hall in order to see if appellant could improve his behavior.

On December 13, 2011, defense counsel advised the court that appellant's behavior at juvenile hall had improved to the point that he was at stage 3 again. After some discussion with appellant and counsel, the court stated,

"[THE COURT:] Okay. Credit will be given for 56 days already spent in custody to be credited against the maximum period of confinement of six months. *The minor's welfare requires that custody be taken from the minor's parent or guardian*.

"The minor will be adjudged a ward of the juvenile court under supervision of probation until December 13th, 2012.

"*Minor will be temporarily removed from the custody of the parent and remanded into custody -- that's not right. He is not going to be remanded into custody*. The minor

will be ordered to perform -- here's what I'm going to do. Is [DRC] going to take a break or anything?

"MR. SANDOVAL: Usually they take maybe a week off.

"THE COURT: Take a week off starting probably --

"MR. SANDOVAL: The week of Christmas. It may be two weeks. They would come back on January 3rd, I believe, or 2nd.

"THE COURT: Would they be going through the week of the 19th?

"MR. SANDOVAL: Yeah.

"THE COURT: Okay. All right. He will be ordered to -- I'm not going to do 20 hours of community service.

"You'll be committed to [DRC] for a period of 180 days. You'll be placed on the electronic monitor for a period not to exceed 45 days." (Italics added.)

At the conclusion of the hearing, the court ordered appellant released that day to the custody of his mother on the electronic monitor. However, the minute order for appellant's continued disposition hearing states at item 14 that the court found appellant's welfare required that his custody be removed from his parents and at item 41 that the court ordered his temporary removal from the physical custody of his parents.

DISCUSSION

Appellant contends that the court's finding that his welfare required the removal of his custody from his parents and its order removing him from their custody *as a ward of the juvenile court* are not supported by substantial evidence and/or conflict with its order placing him in his parents' home. According to appellant, this requires reversal of the court's order removing him from the physical custody of his parents. Appellant concedes that the record supports the order adjudging appellant a ward of the court. Nevertheless, he further contends that because the evidence did not support his removal from the custody of his parents *as a ward of the court*, it appears the court intended to place him

on probation pursuant to section 725[2] for up to six months without making him a ward of the court. Thus, according to appellant, the judgment should be corrected, presumably to reflect the court's intended disposition, or, alternatively, remanded to the juvenile court for "an appropriate disposition." We reject these contentions.

"A juvenile court's commitment order may be reversed on appeal only upon a showing the court abused its discretion. [Citation.] '"We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them."' [Citation.]" (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.)

Here, at appellant's continued disposition hearing, the court found that appellant's welfare required that his custody be taken from his parents, it ordered that appellant be temporarily removed from their custody, and it remanded him into custody. Almost immediately, the court corrected itself and stated that appellant was not going to be remanded into custody. Although in revoking its order remanding appellant into custody the court did not specifically mention the above finding or its order removing appellant's custody from his parents, it is clear from the surrounding circumstances that it also implicitly revoked this finding and order. Accordingly, we reject appellant's contention that the court issued a finding or order that conflicted with its order placing him in his parents' custody and/or is not supported by substantial evidence.

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2 Section 725, in pertinent part, provides: "After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows: [¶] "(a) If the court has found that the minor is a person described by Section 601 or 602, by reason of the commission of an offense other than any of the offenses set forth in Section 654.3, it may, *without adjudging the minor a ward of the court, place the minor on probation, under the supervision of the probation officer, for a period not to exceed six months*. …" (Italics added.)

Moreover, as appellant concedes, the court's order adjudging appellant a ward of the court is amply supported by appellant's gang activity, his substance abuse, his out of control behavior, and his abysmal performance in school. Accordingly, we conclude that the court did not abuse its discretion when it adjudged him a ward of the court.[3]

However, when there is a conflict between the court's oral pronouncement of judgment and the minute order of a hearing, the court's oral pronouncement of judgment controls. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.) Since items 14 and 41 of the minute order of appellant's disposition hearing conflict with the court's oral pronouncement of judgment, we will direct the juvenile court to correct this minute order.

DISPOSITION

The juvenile court is directed to issue an amended minute order for the December 13, 2011, hearing that is consistent with this opinion. In all other respects, the judgment is affirmed.

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3 This conclusion moots appellant's contention that the court intended to place him on nonwardship probation. However, even if this contention were properly before us, we would reject it for lack of evidentiary support.